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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): TRI4546P0170US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

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Application Number	Filed
10/685,750	Oct. 15, 2003

First Named Inventor: Mark Budzik

Art Unit	Examiner
3673	Gay Ann Spahn

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. Registration number 24,103

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Allen J. Hoover
Signature

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Nov. 2, 2005
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of one forms are submitted.

Attachment to Pre-Appeal Brief Request for Review
Application No. 10/685,750

The issues presented by the Office Action dated September 22, 2005, and discussed herein involve claims 1, 5, and 7, and their dependent claims, which are exemplified by claim 1, as follows:

> 1. A drywall-trimming accessory having a flange, which has two expansive surfaces facing oppositely, wherein the drywall-trimming accessory is made from a cellular polymer and wherein at least part of at least one of the expansive surfaces is characterized by open cells of the cellular polymer.

The patent examiner has contended that Koenig, Jr. *et al.* (US2002/013541 A1) discloses a drywall-trimming accessory made from a cellular polymer. As the patent examiner has noted, Koenig, Jr. *et al.* discloses a drywall-trimming strip, which is an example of a drywall-trimming accessory having a flange, and which is "extruded from a polymeric material, such as polyvinyl chloride." The patent examiner has noted in Hawley's Condensed Chemical Dictionary that "[f]lexible foams may be ... polyvinyl chloride ...."

The undersigned attorney submits that, although polyvinyl chloride is capable of being foamed, polyvinyl chloride is not foamed ordinarily, that a disclosure of polyvinyl chloride without any reference to its being foamed or its being cellular is not a disclosure of polyvinyl chloride being foamed or being cellular, and that it is improper hindsight to read into Koenig, Jr. *et al.* that its disclosure of polyvinyl chloride is a disclosure of a cellular polymer. The undersigned attorney does not submit, however, that the drywall-trimming strip of Koenig, Jr. *et al.* could not be made from a cellular polymer.

In any event, even if it were assumed *arguendo* that the disclosure of polyvinyl chloride in Koenig, Jr. *et al.* is a disclosure of a cellular polymer, the patent examiner has acknowledged that "Koenig, Jr. et al. fail to disclose claim 1's limitation that at least part of at least one of the expansive surfaces is characterized by open cells of the cellular polymer."

The patent examiner has referred to Hoffman, Sr. (US 6,684,586 B1) which also discloses a drywall-trimming strip, and which discloses in column 2, lines 19-22, that "the strip is perforated and knurled to increase the surface area and to facilitate the ability of construction adhesives and drywall compound to adhere to the surface of the strip."

The patent examiner has drawn a conclusion, which the undersigned attorney submits is an improper conclusion, that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the drywall-trimming accessory (strip 10) of Koenig, Jr. et al. by milling, abrading or otherwise roughening at least a part of at least one of the expansive surfaces of the flanges thereof and contacting the same part of the same one of the expansive surfaces of the flange thereof to a drywall-finishing compound as taught by Hoffman, Sr. in order to increase the surface area and this expose the open cells of the cellular polymer to the drywall compound so that the drywall trimming accessory would be better able to absorb the drywall compound."

The undersigned attorney submits that, even if it were assumed *arguendo* that Koenig, Jr. *et al.* disclosed a cellular polymer and that a surface of the drywall-trimming strip of Koenig, Jr. *et al.* would be perforated and knurled as taught by Hoffman, Sr., the record does not support a conclusion that the surface, so perforated and knurled, would be characterized by open cells of the cellular polymer. The undersigned attorney submits, rather, that perforations of a flange made from a cellular polymer would not be open cells of the cellular polymer and that the record does not reveal how perforating or knurling would affect a flange made from a cellular polymer.

Respectfully submitted,

By Allen J. Hoover

Allen J. Hoover
Reg. No. 24,103

November 2, 2005